



## 1995 SENATE BILL 531

February 7, 1996 - Introduced by Senator ADELMAN. Referred to Committee on Judiciary.

1     **AN ACT to repeal** 805.08 (2) and (3), 972.03 and 972.04 (2); **to renumber and**  
2             **amend** 972.04 (1); and **to amend** 345.43 (3) (a), 345.43 (3) (b), 972.01 and  
3             972.10 (7) of the statutes; **relating to:** abolishing peremptory jury challenges.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, in most criminal actions, each side has 4 peremptory challenges to use in the selection of a jury. In other words, each side may strike 4 persons from the jury list without stating a reason. In crimes punishable by life imprisonment and in cases involving more than one defendant, the number of peremptory challenges is higher. After jurors are removed for cause, the court gives a written list of the remaining jurors to the prosecutor. The prosecutor indicates on the list a juror whom the prosecutor wants removed. The list is then given to the defendant, who indicates his or her first choice for removal from the jury. The list is passed back and forth between the parties until each has exhausted his or her peremptory challenges. The court then reads aloud the list of jurors impaneled and dismisses the others. The jury is never told who requested the removal of a particular juror.

In *Batson v. Kentucky*, 476 U.S. 79 (1986), the U.S. supreme court held that the equal protection clause of the 14th amendment to the U.S. constitution is violated if a prosecutor purposefully uses peremptory challenges to exclude persons of a particular race from service on a particular jury. This decision was followed by the Wisconsin supreme court in *State v. Walker*, 154 Wis. 2d 158 (1990).

Under current law, in most civil actions, each side has 3 peremptory challenges to use in the selection of a jury. After jurors are removed for cause, the court gives the plaintiff the juror list and the plaintiff chooses one person for removal from the jury. The list is then given to the defendant to choose one person for removal from the jury. This process continues until both sides exhaust their peremptory challenges. If a party decides to decline to challenge, the clerk of court removes one person by lot. In *Edmonson v. Leesville Concrete Co., Inc.*, 111 S. Ct. 2077 (1991), the

U.S. supreme court held that the equal protection component of the due process clause of the 5th amendment to the U.S. constitution is violated if a private litigant in a civil action uses peremptory challenges to exclude jurors on account of race.

This bill abolishes the use of peremptory challenges.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 345.43 (3) (a) of the statutes is amended to read:

2           345.43 (3) (a) If a jury of less than 12 persons is demanded, in counties having  
3 a population of 500,000 or more, the jury shall be drawn from the circuit court jury  
4 panel and selected as set forth under chs. 801 to 847. In all other counties, such juries  
5 shall be selected as provided in pars. (b) and (c), except that any party may demand  
6 trial by a countywide jury ~~and that the clerk shall select, by lot, the names of~~  
7 ~~sufficient persons qualified to serve as jurors as will provide to each party entitled~~  
8 ~~to peremptory challenges the number of challenges specified in par. (b).~~

9           **SECTION 2.** 345.43 (3) (b) of the statutes is amended to read:

10          345.43 (3) (b) If a timely demand for a jury of less than 12 persons is made, the  
11 judge shall direct the clerk of the court to select by lot from the current jury panel  
12 the names of a sufficient number of residents of the county qualified to serve as jurors  
13 in courts of record, ~~from which lists either party may strike 5 names. If either party~~  
14 ~~neglects to strike out names, the clerk shall strike out names for the party.~~ The judge  
15 shall permit voir dire examinations and challenges for cause. The clerk shall  
16 summon a sufficient number of persons whose names are not struck out, to appear  
17 at the time and place named in the summons.

18          **SECTION 3.** 805.08 (2) and (3) of the statutes are repealed.

19          **SECTION 4.** 972.01 of the statutes is amended to read:

1           **972.01 Jury; civil rules applicable.** The summoning of jurors, the  
2 impaneling and qualifications of the jury, the challenge of jurors for cause and the  
3 duty of the court in charging the jury and giving instructions and discharging the  
4 jury when unable to agree shall be the same in criminal as in civil actions, ~~except that~~  
5 ~~s. 805.08 (3) shall not apply.~~

6           **SECTION 5.** 972.03 of the statutes is repealed.

7           **SECTION 6.** 972.04 (1) of the statutes is renumbered 972.04 and amended to  
8 read:

9           **972.04 Exercise of challenges.** The number of jurors impaneled shall be 12  
10 unless a lesser number has been stipulated and approved under s. 972.02 (2) or the  
11 court orders that additional jurors be impaneled. That number, ~~plus the number of~~  
12 ~~peremptory challenges available to all the parties,~~ shall be called initially and  
13 maintained in the jury box by calling others to replace jurors excused for cause until  
14 all jurors have been examined. ~~The parties shall thereupon exercise in their order,~~  
15 ~~the state beginning, the peremptory challenges available to them, and if any party~~  
16 ~~declines to challenge, the challenge shall be made by the clerk by lot.~~

17           **SECTION 7.** 972.04 (2) of the statutes is repealed.

18           **SECTION 8.** 972.10 (7) of the statutes is amended to read:

19           **972.10 (7)** If additional jurors have been impaneled under s. 972.04 (1) and the  
20 number remains more than required at final submission of the cause, the court shall  
21 determine by lot which jurors shall not participate in deliberations and discharge  
22 them.

23           **SECTION 9. Initial applicability.**

24           (1) This act first applies to actions commenced on the effective date of this  
25 subsection.

